

Application No. 10/634,152

Atty Docket No. MLSE 1034-1

REMARKS

Claims 1-17 are currently pending in this application. The Examiner has objected to **claims 13, 14 and 17** under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend upon another multiple dependent claim, citing MPEP § 608.01(n), stating that the claim has not been further treated on the merits.

Claims 1-12, 15 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of co-pending Application No. 10/911,412. The Examiner states that although the claims are not identical, they are not patentably distinct from each other because the inventive steps in both applications are the same.

Objections Under 37 CFR 1.75(c) of Claims 13, 14 and 17

Claims 13, 14 and 17 have been amended. They are now allowable, as they depend from a claim for which the only rejection is a provisional nonstatutory obvious-type double patenting rejection.

Rejections Under the Doctrine of Obviousness of Claims 1-12, 15 and 16

This application will issue before application 10/911,412, because the '412 application has not been examined yet. MPEP § 804, at 800-17 (Rev. 3, Aug. 2005) explains how to proceed:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should **withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer**. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

Accordingly, the provisional rejection must now be withdrawn and this earlier-filed application permitted to issue without a terminal disclaimer.

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CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims, in light of these amendments.

The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Fee Authorization. The Commissioner is hereby authorized to charge any fees associated with this communication to our Deposit Account No. 50-0869 (MLSE 1034-1).

Respectfully submitted,



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